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No. 85-252

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CENTRAL & SOUTHERN MOTOR FREIGHT TARIFF ASSOCIATION, *et al.*,

Petitioners,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

Petitioners submit this reply to the Brief of Respondents, filed November 13, 1985.

Petitioners contest two contentions of respondents:

(a) Respondents argue that public tariff filing by motor contract carriers is of no substantial benefit to competing motor common carriers because the contract carriers no longer publicly file their carrier-shipper contracts. Without recourse to those contracts, respondents contend, competing carriers cannot use the tariffs to make "easy" price comparisons, because the tariffs alone lack the necessary details. Brief of Respondents, at 3 (ftnt. 1), 7.

This argument is unsound. The publicly-filed tariffs of motor contract carriers must, by law, show the carriers' actual and minimum rates for transportation. 49 U.S.C. Sec. 10702(b). This is the information which Congress has deemed essential to protect motor common carriers

from destructive competition. The fact that motor carrier contracts are no longer filed publicly *increases*, not reduces, the need to continue tariff filing. Indeed, when the ICC decided to relieve motor contract carriers from contract filing, it cited its continuing oversight of publicly-filed tariffs as a sufficient protection of the public interest:

> Of course, the contract carriers are still required to enter into written bilateral contracts and to file with us a schedule of actual rates and charges. The standard remedies against unlawfulness are still available to any interested person by way of protest or complaint. We believe that the tariff publishing requirements imposed upon contract carriers by the Transportation Act of 1940 (49 U.S.C. 318, recodified at 49 U.S.C. 10762(a)(1)(B) afford an adequate means to achieve the ends which the Commission sought to achieve by establishing its regulations controlling the content and filing of the contracts.[1]

(b) Respondents argue that petitioners' fear of destructive competition from motor contract carriers is unfounded because increased competition in the industry makes predatory pricing unlikely. Brief of Respondents, at 8. This argument overlooks the fact that when Congress passed the Motor Carrier Act of 1980, 94 Stat. 793, P.L. 96-296—respondents' touchstone for the tariff-filing exemption—it continued to prohibit the ICC from giving "a motor or water contract carrier an advantage or preference in competition with a motor or water common carrier, respectively, if an advantage or preference is unreasonable or inconsistent with the public interest and the transportation policy of section 10101 of this title." 49 U.S.C. Sec. 10704. Respondents' easy equation between predatory pricing and the destructive competition by motor contract carriers which Congress has prohibited is not valid. Respondents' theory that common carriers can flee the predatory market, to return when and if the

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[1] Ex Parte No. MC-9 (Sub-No. 1), *Filing of Contracts by Contract Carriers by Motor Vehicle,* 45 Fed. Reg. 58865 (Sept. 5, 1980).

competing contract carrier raises its rates, ignores the economic impact upon the common carrier in the interim and ignores Congress's desire to maintain common carriage as a viable transportation mode.

CONCLUSION

Respondents have failed to answer Petitioners' basic contention that tariff filing by motor contract carriers is part of a three-part, interdependent statutory scheme to thwart destructive competition and assure the viability of common carriage. Without tariff filing, the ICC's power to suspend, investigate, and prescribe contract-carrier rates is a nullity. The fact that carriers no longer publicly file their contracts or that, arguendo, open entry discourages predatory pricing is no basis for ignoring the Congressional purpose.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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